

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Jose Estrada,

Plaintiff,

v.

Lion Market Story, LLC, a
California Limited Liability
Company

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Jose Estrada complains of Lion Market Story, LLC, a California Limited Liability Company; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who cannot walk and who uses a wheelchair for mobility.

2. Defendant Lion Market Story, LLC owned Lion Market located at or about 1070 Story Rd., San Jose, California, in February 2022.

3. Defendant Lion Market Story, LLC owns Lion Market ("Store") located at or about 1070 Story Rd., San Jose, California, currently.

1 4. Plaintiff does not know the true names of Defendants, their business
2 capacities, their ownership connection to the property and business, or their
3 relative responsibilities in causing the access violations herein complained of,
4 and alleges a joint venture and common enterprise by all such Defendants.
5 Plaintiff is informed and believes that each of the Defendants herein is
6 responsible in some capacity for the events herein alleged, or is a necessary
7 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
8 the true names, capacities, connections, and responsibilities of the Defendants
9 are ascertained.

10
11 **JURISDICTION & VENUE:**

12 5. The Court has subject matter jurisdiction over the action pursuant to 28
13 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
14 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

15 6. Pursuant to supplemental jurisdiction, an attendant and related cause
16 of action, arising from the same nucleus of operative facts and arising out of
17 the same transactions, is also brought under California's Unruh Civil Rights
18 Act, which act expressly incorporates the Americans with Disabilities Act.

19 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
20 founded on the fact that the real property which is the subject of this action is
21 located in this district and that Plaintiff's cause of action arose in this district.

22
23 **FACTUAL ALLEGATIONS:**

24 8. Plaintiff went to the Store in February 2022 with the intention to avail
25 himself of its goods or services motivated in part to determine if the
26 defendants comply with the disability access laws.

27 9. The Store is a facility open to the public, a place of public
28 accommodation, and a business establishment.

1 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed
2 to provide wheelchair accessible paths of travel in conformance with the ADA
3 Standards as it relates to wheelchair users like the plaintiff.

4 11. The Store provides paths of travel to its customers but fails to provide
5 wheelchair accessible paths of travel in conformance with the ADA Standards.

6 12. A problem that plaintiff encountered was that some of the paths of travel
7 inside the Store obstructed plaintiff's ability to shop. In fact, there was not
8 enough clear floor space in front of the potatoes due to merchandise and
9 produce that the Store places there.

10 13. Plaintiff believes that there are other features of the paths of travel that
11 likely fail to comply with the ADA Standards and seeks to have fully compliant
12 paths of travel for wheelchair users.

13 14. On information and belief, the defendants currently fail to provide
14 wheelchair accessible paths of travel.

15 15. Additionally, on the date of the plaintiff's visit, the defendants failed to
16 provide wheelchair accessible restrooms in conformance with the ADA
17 Standards as it relates to wheelchair users like the plaintiff.

18 16. The Store provides restrooms to its customers but fails to provide
19 wheelchair accessible restrooms in conformance with the ADA Standards.

20 17. One problem that plaintiff encountered was that some of the pipes
21 underneath the restroom sink were not wrapped to protect against burning
22 contact.

23 18. Plaintiff believes that there are other features of the restrooms that
24 likely fail to comply with the ADA Standards and seeks to have fully compliant
25 restrooms for wheelchair users.

26 19. On information and belief, the defendants currently fail to provide
27 wheelchair accessible restrooms.

28 20. The failure to provide accessible facilities created difficulty and

1 discomfort for the Plaintiff.

2 21. These barriers relate to and impact the plaintiff's disability. Plaintiff
3 personally encountered these barriers.

4 22. As a wheelchair user, the plaintiff benefits from and is entitled to use
5 wheelchair accessible facilities. By failing to provide accessible facilities, the
6 defendants denied the plaintiff full and equal access.

7 23. The defendants have failed to maintain in working and useable
8 conditions those features required to provide ready access to persons with
9 disabilities.

10 24. The barriers identified above are easily removed without much
11 difficulty or expense. They are the types of barriers identified by the
12 Department of Justice as presumably readily achievable to remove and, in fact,
13 these barriers are readily achievable to remove. Moreover, there are numerous
14 alternative accommodations that could be made to provide a greater level of
15 access if complete removal were not achievable.

16 25. Plaintiff will return to the Store to avail himself of its goods or services
17 and to determine compliance with the disability access laws once it is
18 represented to him that the Store and its facilities are accessible. Plaintiff is
19 currently deterred from doing so because of his knowledge of the existing
20 barriers and his uncertainty about the existence of yet other barriers on the
21 site. If the barriers are not removed, the plaintiff will face unlawful and
22 discriminatory barriers again.

23 26. Given the obvious and blatant nature of the barriers and violations
24 alleged herein, the plaintiff alleges, on information and belief, that there are
25 other violations and barriers on the site that relate to his disability. Plaintiff will
26 amend the complaint, to provide proper notice regarding the scope of this
27 lawsuit, once he conducts a site inspection. However, please be on notice that
28 the plaintiff seeks to have all barriers related to his disability remedied. See

Doran v. 7-11, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

27. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

28. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the

maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

29. When a business provides paths of travel, it must provide accessible paths of travel.

30. Here, accessible paths of travel have not been provided in conformance with the ADA Standards.

31. When a business provides restrooms, it must provide accessible restrooms.

32. Here, accessible restrooms have not been provided in conformance with the ADA Standards.

33. The Safe Harbor provisions of the 2010 Standards are not applicable here because the conditions challenged in this lawsuit do not comply with the 1991 Standards.

34. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

35. Here, the failure to ensure that the accessible facilities were available and ready to be used by the plaintiff is a violation of the law.

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

36. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia, that persons with disabilities are entitled to full and equal accommodations,

1 advantages, facilities, privileges, or services in all business establishment of
 2 every kind whatsoever within the jurisdiction of the State of California. Cal.
 3 Civ. Code §51(b).

4 37. The Unruh Act provides that a violation of the ADA is a violation of the
 5 Unruh Act. Cal. Civ. Code, § 51(f).

6 38. Defendants' acts and omissions, as herein alleged, have violated the
 7 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
 8 rights to full and equal use of the accommodations, advantages, facilities,
 9 privileges, or services offered.

10 39. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
 11 discomfort or embarrassment for the plaintiff, the defendants are also each
 12 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
 13 (c).

14
 15 **PRAYER:**

16 Wherefore, Plaintiff prays that this Court award damages and provide
 17 relief as follows:

18 1. For injunctive relief, compelling Defendants to comply with the
 19 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
 20 plaintiff is not invoking section 55 of the California Civil Code and is not
 21 seeking injunctive relief under the Disabled Persons Act at all.


22 2. For equitable nominal damages for violation of the ADA. See
 23 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
 24 and any other equitable relief the Court sees fit to grant.

25 3. Damages under the Unruh Civil Rights Act, which provides for actual
 26 damages and a statutory minimum of \$4,000 for each offense.

27 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
 28 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

1 Dated: March 1, 2022

CENTER FOR DISABILITY ACCESS

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3 By: 
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5 Amanda Seabock, Esq.
6 Attorney for plaintiff
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